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New York Case Puts Integrity of Bankruptcy Process to Test

January 5, 2022

(<https://crenews.com/2022/01/05/new-york-case-puts-integrity-of-bankruptcy-process-to-test/>)

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Commercial Real Estate Direct Staff Report

A case wending its way through the court system raises questions about the integrity of the bankruptcy and Uniform Commercial Code processes.

The case, filed in the U.S. District Court for the Southern District of New York, revolves around actions by the provider of an \$8 million mortgage against a vacant 20,555-square-foot warehouse at 286 Rider Ave. in the Bronx, N.Y. An investor group led by Toby Moskovits and Yechial Michael Lichtenstein purchased the property in 2019, with plans to redevelop it into apartments.

The lender is an affiliate of Be-Aviv Fund I, which is sponsored by New York finance company Be-Aviv, led by Ben Harlev. It had provided the financing to facilitate the Moskovits/Lichtenstein group's \$10 million purchase. At the time, the property had appraised at a value of \$12 million. But the group, 286 Rider Ave Acquisition LLC, had put up as additional collateral membership interests in the ownership group.

Last March, Be-Aviv sent a notice of default and accelerated its loan. Less than two months later, in late April, the lender notified the investor group that it was exercising its rights to take over the membership interests. On July 14, it advised the group that it had exercised its rights, effectively making an affiliate, 286 Rider Ave Lender LLC, the property's owner. Two weeks later, the affiliate filed bankruptcy. And that appears to be a sticking point.

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West Palm Beach, Fla., Shopping Center Fetches \$20.7Mln

(<https://crenews.com/2022/02/18/west-palm-beach-fla-shopping-center-fetches-20-7mln/>)

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Apartments, Industrial Space Coming to St. Petersburg, Fla.

(<https://crenews.com/2022/02/18/apartments-industrial-space-coming-to-st-petersburg-fla/>)

February 18, 2022

The Moskovits/Lichtenstein group argues that the lender's exercising of its rights was done without complying with UCC rules. But Be-Aviv was both lender and owner, based on the July 14 notice. The bankruptcy process is designed to provide borrowers a way of renegotiating their indebtedness. If the lender had taken over ownership of the loan's collateral, that would have extinguished the indebtedness, excluding any potential deficiencies.

Court records show that Be-Aviv had filed the requisite statement of financial affairs and schedules of assets and liabilities on Oct. 25. Those listed membership interests in the warehouse having been held between April 27 and June 14.

The suit by the ownership group alleges that Be-Aviv had sought to take ownership of the equity interests in the property "without complying with the (UCC), which requires notice (and other safeguards) in order to foreclose on one's interests under well-established law."

It notes that in New York, a "strict" foreclosure would take place only if a lender provides written notice to the borrower in the event of a default. In addition, the suit noted that a lender - a secured party - must send notice before disposing of collateral. That allegedly never happened. Instead, the "lender exercised foreclosure by filling in its own name in the assignment of member interests" in violation of UCC rules.

In early November, the statement of financial affairs filing was amended and "contradicted the prior sworn statements that lender LLC held 100 percent of the equity" in the property, according to court documents. Instead, the filings listed the Moskovits/Lichtenstein group as the sole owner.

Meanwhile, in mid-December, Be-Aviv's attorney had written to the judge hearing the case, asking to disallow the group's effort to "supplement the record to add documents." That presumably alludes to the original statement of financial affairs that had indicated Be-Aviv was owner of the membership interests.

Nonetheless, Be-Aviv "continues to wrongfully assert management control, pursuing a sale scenario destined to strip title and residual value in the property ... in contravention of New York law," the suit argues.

The lender is scheduled to auction off the property on Jan. 14.

The Moskovits/Lichtenstein group is seeking an expedited appeal and a stay, or temporary halt, of the scheduled auction as well as of the default declaration. Without an expedited appeal, briefs would be due Jan. 29, well after the property would be sold.

The suit argues, "The bankruptcy court relied on the erroneous assertions by the debtor and representations of counsel that lender's affiliate was the sole member - a key fact that turned out to be untrue, based on debtor's own subsequent sworn statement."

In a letter to Greg Zipes, trustee for the bankruptcy, Moskovits explained that the bankruptcy filing was triggered when Be-Aviv had allegedly taken "possession" of the property and "purported to transfer those interests to an affiliate, 286 Rider Ave Lender LLC, in an attempt to disguise the fact that the lender was both a creditor and equity in the same bankruptcy at the time of the filing."

348-Unit Apartment Project Planned Near Orlando International Airport
(<https://crenews.com/2022/02/18/348-unit-apartment-project-planned-near-orlando-international-airport/>)

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Parkview Lends \$42.5Mln for Purchase, Redevelopment of Colo. Hotel into Apartments
(<https://crenews.com/2022/02/18/parkview-lends-42-5mln-for-purchase-redevelopment-of-colo-hotel-into-apartments/>)

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Argent Pays \$105Mln for White Plains, N.Y., Office Complex
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Meanwhile, the bankruptcy court has "urged the debtor to negotiate," Be-Aviv's attorney wrote in a recent note. But, he wrote, actions by Moskovitz "make it clear" that the investor group has no interest in settling the issue.

Comments? E-mail Orest Mandzy (mailto:orest.mandzy@crenews.com?subject=story), or call him at (267) 865-3680 (tel:(267) 865-3680).

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South Florida Business Journal An affiliate of Nightingale Group has sold the Shoppes at Cresthaven, a 175,198-square-foot shopping center in West Palm Beach, Fla, for \$207 million, or about \$118315/sf The New York company sold the retail property...

Stonehill Lends \$58.07Mln for Kahului, Hawaii Hotel (<https://crenews.com/2022/02/18/stonehill-lends-58-07mln-for-kahului-hawaii-hotel/>)

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February 15, 2022

02

Goldman Sachs Enters Consensual Foreclosure Talks with Owner of Staten Island, N.Y., Mall
(<https://crenews.com/2022/02/14/goldman-sachs-enters-consensual-foreclosure-talks-with-owner-of-staten-island-n-y-mall/>)

February 14, 2022

03

Servicer of Loan Against Poughkeepsie Galleria Eyes Foreclosure
(<https://crenews.com/2022/01/28/servicer-of-loan-against-poughkeepsie-galleria-eyes-foreclosure/>)

January 28, 2022

04

SL Green Hired to Service \$800Mln Loan Against Manhattan's Times Square Edition
(<https://crenews.com/2022/01/25/sl-green-hired-to-service-800mln-loan-against-manhattans-times-square-edition/>)

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05

New York Case Puts Integrity of Bankruptcy Process to Test
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